

1 SENATE BILL NO. 86

2 INTRODUCED BY D. ANKNEY

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING COAL-FIRED GENERATION
 5 REMEDIATION AND RETIREMENT REQUIREMENTS; REQUIRING THAT DECOMMISSIONING
 6 REQUIREMENTS BE INCLUDED IN A COAL-FIRED GENERATING UNIT REMEDIATION AND
 7 RETIREMENT PLAN; ESTABLISHING DECOMMISSIONING REQUIREMENTS; REVISING REQUIREMENTS
 8 FOR JUDICIAL REVIEW; REQUIRING PAYMENT OF CERTAIN DECOMMISSIONING COSTS;
 9 ESTABLISHING A COAL-FIRED GENERATING UNIT RETIREMENT GRANT PROGRAM ACCOUNT;
 10 PROVIDING FOR USE OF THE GRANT PROGRAM; PROVIDING RULEMAKING AUTHORITY; REQUIRING
 11 REPORTING TO THE GOVERNOR AND LEGISLATURE; PROVIDING DEFINITIONS; AMENDING
 12 SECTIONS 75-8-101, 75-8-102, 75-8-103, 75-8-105, 75-8-106, 75-8-107, 75-8-108, 75-8-109, AND 75-10-704,
 13 MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

14

15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16

17 **NEW SECTION. Section 1. Coal-fired generating unit retirement grant program account. (1)**

18 There is an account in the state special revenue fund established in 17-2-102 to be known as the coal-fired
 19 generating unit retirement grant program account.

20 (2) There must be deposited in the account:

21 (a) money received from legislative allocations;

22 (b) payments or penalties received in accordance with 75-8-106(7)(b), 75-8-106(8)(b), and 75-8-
 23 109(3)(c); and

24 (c) any gift, donation, grant, legacy, bequest, or devise made for the purposes of [section 2].

25 (3) Subject to [section 2(5)], funds in the account must be used for grants made in accordance with
 26 [section 2] and for the department's administrative costs.

27

28 **NEW SECTION. Section 2. Coal-fired generating unit retirement grant program -- rulemaking --**

1 **reporting requirements.** (1) The department shall make grants available using the account established in
2 [section 1] to entities owning property affected by the retirement or pending retirement of a coal-fired generating
3 unit. The department shall award grants using information provided in a remediation and retirement plan in
4 accordance with 75-8-105(1)(f).

5 (2) Grants must be provided to entities including but not limited to residential and commercial real
6 estate owners with property impacted by the retirement or pending retirement of a coal-fired generating unit.

7 (3) Entities may work cooperatively on a grant proposal. The department shall work with applicants in
8 preparing cost estimates for a proposal. In reviewing proposals, the department may consult with other state
9 agencies with expertise pertinent to a proposal and use information included in an approved remediation and
10 retirement plan.

11 (4) The department shall adopt rules necessary to administer and implement the grant program. The
12 rules must provide for distribution methods and reporting requirements for grants.

13 (5) Administrative expenses for the grant program during a fiscal year may not exceed actual
14 administrative costs.

15 (6) The department shall report to the governor and the legislature as provided in 5-11-210 regarding
16 the disbursement of grants that are awarded during each biennium.

17

18 **Section 3.** Section 75-8-101, MCA, is amended to read:

19 **"75-8-101. Short title.** This part may be cited as the "Coal-Fired Generating Unit Remediation and
20 Retirement Act"."

21

22 **Section 4.** Section 75-8-102, MCA, is amended to read:

23 **"75-8-102. Findings -- intent.** (1) The legislature, mindful of its constitutional obligations under Article
24 II, section 3, and Article IX of the Montana constitution, has enacted the Coal-Fired Generating Unit
25 Remediation and Retirement Act.

26 (2) It is the legislature's intent that the requirements of this part ensure that appropriate remedies are
27 in place when a coal-fired generating unit is retired to ensure the protection of the environmental life support
28 systems from degradation, ~~and~~ to provide adequate remedies to prevent unreasonable degradation of natural

1 resources, and to mitigate the effects of the retirement of a coal-fired generating unit on the communities most
2 impacted."

3

4 **Section 5.** Section 75-8-103, MCA, is amended to read:

5 **"75-8-103. Definitions.** As used in this part, the following definitions apply:

6 (1) (a) "Affected property" means the property owned by or under the control of an owner that is
7 affected by a coal-fired generating unit, including:

8 (i) land, surface water, or ground water directly affected by the coal-fired generating unit, associated
9 impoundments, disposal and waste operations, buildings, structures, or other improvements or operations
10 infrastructure; and

11 (ii) areas affected by activities necessary to the closure and dismantling of the coal-fired generating
12 unit.

13 (b) The term does not include:

14 (i) land, water, or air affected or potentially affected by emissions from the operation of a coal-fired
15 generating unit; or

16 (ii) the mining of coal at an underground or strip mine and used at the coal-fired generating unit.

17 (2) "Applicable legal obligations" means any applicable state or federal environmental laws, including
18 but not limited to the Montana Water Quality Act, rules regarding disposal of coal combustion residuals from
19 electric utilities, the Montana Major Facility Siting Act, and other applicable laws administered by the
20 department in accordance with Title 75. The term includes any consent order or settlement entered into by the
21 department and an operator or owner imposing obligations to undertake remediation actions at the coal-fired
22 generating unit or affected property.

23 (3) "Coal-fired generating unit" means an individual unit of a coal-fired electrical generating facility
24 located in Montana, where the unit has a generating capacity that is greater than or equal to 200 megawatts.

25 (4) (a) "Decommissioning requirements" means the dismantlement, removal, and disposal of a coal-
26 fired generating unit, including the unit itself and any related components and materials associated with the unit.

27 (b) Except as provided in subsection (4)(c), the term also means the estimated loss of value of a
28 residential or commercial property attendant to a coal-fired generating unit based on:

1 (i) the owner of the property executing a sale of property after July 1, 2020, and on or before July 1,
 2 2025;

3 (ii) the outstanding liability associated with the property, based on the original liability or loan,
 4 exceeding its fair market value;

5 (iii) the owner being subjected to a price reduction due to the retirement or pending retirement of a
 6 coal-fired generating unit; and

7 (iv) the sale, not including a transfer from borrowers to lenders, that takes place as part of a
 8 foreclosure process, including deeds in lieu of foreclosure, foreclosure deeds, or sheriff's deeds.

9 (c) The term does not mean costs or liabilities otherwise defined by a contract between owners,
 10 operators, or both.

11 ~~(4)~~(5) "Department" means the department of environmental quality provided for in 2-15-3501.

12 ~~(5)~~(6) "Operator" means the person engaged in operating or undertaking remediation and retirement
 13 actions at a coal-fired generating unit. An operator may or may not be an owner.

14 ~~(6)~~(7) "Owner" means a person who has a legal or equitable interest in property subject to this part or
 15 the person's legal representative.

16 ~~(7)~~(8) "Person" means an individual, partnership, corporation, association, or other legal entity or any
 17 political subdivision of the state or federal government.

18 ~~(8)~~(9) "Reasonably anticipated future uses" means likely future land or resource uses that take into
 19 consideration:

20 (a) local land and resource use regulations, ordinances, restrictions, or covenants;

21 (b) historical and anticipated uses of a site where a coal-fired generating unit is located;

22 (c) patterns of development in the immediate area; and

23 (d) relevant indications of anticipated land use from an operator or owner, or both, of a coal-fired
 24 generating unit, affected property owners, and local planning officials.

25 ~~(9)~~(10) "Remediation" means all actions required by an applicable legal obligation directed exclusively
 26 toward achieving a degree of cleanup required in accordance with 75-8-107.

27 ~~(10)~~(11) "Retired" or "retire" means the complete and permanent closure of a coal-fired generating unit.
 28 Retirement occurs on the date that the coal-fired generating unit ceases combustion of fuel and permanently

1 ceases to generate electricity."

2

3 **Section 6.** Section 75-8-105, MCA, is amended to read:

4 **"75-8-105. Remediation and retirement plan.** (1) ~~No later than 3 months after~~ At least 6 months
5 before a coal-fired generating unit is retired ~~and but~~ no earlier than 5 years prior to a coal-fired generating unit's
6 planned retirement, an owner shall submit a proposed remediation and retirement plan that contains:

7 (a) the name of the operator of the coal-fired generating unit and the names and addresses of all
8 owners of the coal-fired generating unit;

9 (b) a general overview of the site where the unit is located, the unit itself, and affected property;

10 (c) the current and reasonably anticipated future uses of affected property; ~~and~~

11 (d) remediation information, including:

12 (i) a list of reports, studies, or other evaluations related to remediation and specific remediation
13 measures already completed or under way pursuant to any applicable legal obligation; and

14 (ii) the manner in which the remediation measures satisfy the requirements of 75-8-107 and a
15 description of how the owner will comply;

16 (e) an overview of the decommissioning requirements as defined in 75-8-103(4)(a) that are planned
17 for the coal-fired generating unit;

18 (f) an overview of the decommissioning requirements as defined in 75-8-103(4)(b) and an estimate of
19 their costs, the data and assumptions supporting the cost estimate, and timeframes in which the
20 decommissioning requirements will be paid;

21 (g) a description of the owner's plans to address the employee rights, benefits, and pensions of union,
22 salaried, and other employees affected by the retirement of the coal-fired generating unit; and

23 (h) an overview of efforts to ensure that a local government attendant to the coal-fired generating unit
24 is granted ownership of the affected local government's water rights and related infrastructure, ensuring the
25 affected local government's ability to maintain its water supply and water rights.

26 (2) (a) If a coal-fired generating unit has more than one owner, the owners may jointly submit a
27 remediation and retirement plan in accordance with this part.

28 (b) If the owners are unable to submit a joint plan, then each owner of the coal-fired generating unit

1 that is being retired or is retired is responsible for meeting the requirements of this part. If separate plans are
 2 filed, the department shall ensure that the plans detail individual legal obligations and decommissioning
 3 requirements pursuant to 75-8-106(1)(c). If there is a conflict in the plans, the department shall reconcile the
 4 conflict to ensure that the plans are consistent with existing law, and legal obligations, and decommissioning
 5 requirements.

6 (3) A plan required pursuant to subsection (1) may consist of a plan for more than one unit that is
 7 retired at the same time and planned for simultaneous remediation and retirement.

8 (4) The filing of a plan is not a commitment to retire a coal-fired generating unit on any particular date
 9 that is not otherwise required by an applicable legal obligation."
 10

10

11 **Section 7.** Section 75-8-106, MCA, is amended to read:

12 **"75-8-106. Approval of plan -- time limits -- contents and expiration.** (1) (a) The department shall
 13 review for completeness a remediation and retirement plan and provide a written completeness notice to an
 14 owner within 60 days of receipt of the remediation and retirement plan and within 30 days of receipt of
 15 responses to notices of deficiencies. The initial completeness notice must include all deficiencies identified in
 16 the information submitted.

17 (b) Review of the plan is not subject to Title 75, chapter 1, parts 1 through 3.

18 (c) If there are multiple owners, each owner is responsible only for decommissioning requirements as
 19 defined in 75-8-103(4)(b) based on the owner's percentage share of ownership in the unit that is retired.

20 ~~(e)~~(d) During the review period provided in subsection (5), an owner may respond in writing to the
 21 comments received by the department during the public comment period.

22 (2) The department shall provide formal written notification of approval or modification within ~~420~~ 180
 23 days of determining a proposed remediation and retirement plan is complete, unless the owner and the
 24 department agree to an extension of the review to a date certain. Any modification by the department is limited
 25 to a modification necessary to conform the plan to applicable legal obligations and decommissioning
 26 requirements.

27 (3) The department may access the site where the unit is located, the unit itself, and affected
 28 property, at reasonable times and after reasonable notice to the owner, during review of the plan to confirm that

1 information provided by the owner ~~and~~ is consistent with the proposed plan.

2 (4) The department shall approve a remediation and retirement plan if the department concludes that
3 the plan meets the requirements of this part.

4 (5) Within 10 days of the date the department determines that a proposed remediation and retirement
5 plan is complete, the department shall publish a notice and brief summary of the proposed remediation and
6 retirement plan in a daily newspaper of general circulation in the area affected and make the plan available to
7 the public. The department ~~also~~ shall also post the notice on its website. The notice must provide 45 60 days
8 for submission of written comments to the department regarding the plan. The notice must also advise the
9 public of the time and place of a public meeting at or near the coal-fired generating unit site regarding the
10 proposed remediation and retirement plan. The meeting must be held within 45 days of the date that written
11 notice of the department's completeness determination is provided to the owner or operator. To the extent there
12 is any conflict between the public notice provisions of this section and those contained in any applicable legal
13 obligation, the provisions of the applicable legal obligation supersede the requirements of this subsection.

14 (6) If a remediation and retirement plan is modified by the department, the department shall promptly
15 provide the public with notice through its website and the owner with notice through a written statement of the
16 reasons for modification. A modification may be appealed in accordance with 75-8-108.

17 (7) After a plan is approved, an owner of a coal-fired generating unit shall:

18 (a) implement remediation requirements in accordance with applicable legal obligations and
19 decommissioning requirements as defined in 75-8-103(4)(a) at the coal-fired generating unit based on a
20 schedule agreed to by the department and the owner; and

21 (b) provide payment for decommissioning requirements as defined in 75-8-103(4)(b) to be deposited
22 by the department in the coal-fired generating unit retirement grant program account established in [section 1].

23 ~~(7)(8)~~ (a) To the extent that remediation costs and decommissioning requirements as defined in 75-8-
24 103(4)(a) are not recovered or recoverable under other applicable legal obligations, the department may
25 recover its actual costs, including administrative costs, for its review of a plan and for its monitoring, inspection,
26 and enforcement activities related to the approved plan. Recovered costs must be deposited in the
27 environmental quality protection fund established in 75-10-704.

28 (b) To the extent that decommissioning requirements as defined in 75-8-103(4)(b) are not recovered

1 or recoverable, the department may recover its actual costs, including administrative costs, for its review of a
 2 plan. Recovered costs must be deposited in the coal-fired generating unit retirement grant program account
 3 established in [section 1]."
 4

5 **Section 8.** Section 75-8-107, MCA, is amended to read:

6 **"75-8-107. Degree of cleanup required -- labor requirements.** (1) ~~A remediation-~~Remediation
 7 efforts to meet applicable legal obligations and decommissioning requirements as defined in 75-8-103(4)(a)
 8 included in a plan must demonstrate that it will meet the requirements of subsection (2) and attain a degree of
 9 cleanup of the affected property consistent with, but not more stringent than, applicable legal obligations, giving
 10 consideration to reasonably anticipated future uses of affected property.

11 (2) When contracting for the performance of construction, alteration, demolition, installation, repair, or
 12 maintenance work to implement a remediation and retirement plan, an owner shall require that its contractors
 13 and any subcontractors use a skilled and trained workforce to perform all remediation. Contracts signed must
 14 require contractors and subcontractors to:

15 (a) pay the standard prevailing rate of wages as defined in 18-2-401 for remediation; and

16 (b) pay apprentice wage rates, as applicable, in accordance with 39-6-108 for remediation completed
 17 by an apprentice employed by a contractor or subcontractor."
 18

19 **Section 9.** Section 75-8-108, MCA, is amended to read:

20 **"75-8-108. Remediation and retirement plan -- appeal -- venue.** (1) (a) Subject to subsection
 21 (1)(b), an owner or any person whose interests are or may be materially adversely affected by a final decision
 22 of the department to approve or modify a remediation and retirement plan under this part may file for judicial
 23 review of the department's decision. The request for judicial review and a statement of the basis for the review
 24 must be filed with the court within 30 days of the department's decision.

25 (b) In order for a person to file a request for review under subsection (1)(a), a person must have either
 26 submitted comments to the department on a remediation and retirement plan or submitted comments at a
 27 public meeting held in accordance with 75-8-106(5), or the person must be challenging a change made by the
 28 department between the draft and final plan.

1 (2) An owner may appeal the department's decision on a plan by submitting a request for judicial
2 review. The request for judicial review and the statement of the basis for the review must be filed with the court
3 within 30 days of the department's decision.

4 (3) In considering a request for review under this part, the court shall uphold the decision made by the
5 department unless the objecting person can demonstrate, on the administrative record, that the department's
6 decision was arbitrary and capricious or otherwise not in accordance with the law.

7 (4) A petition for judicial review under this section must be brought in the ~~first judicial district, Lewis
8 and Clark County~~ district court of the county where the coal-fired generating unit is located."

9

10 **Section 10.** Section 75-8-109, MCA, is amended to read:

11 **"75-8-109. Enforcement of plan -- penalty.** (1) If the department finds that an owner has failed to file
12 a plan or implement an approved plan, it may serve written notice of the violation, by certified mail, on the
13 owner. The notice must specify the provisions of this part and the facts alleged to constitute a violation. The
14 notice must include an order to take necessary corrective action within a reasonable period of time. The time
15 period must be stated in the order. Service by mail is complete on the date of mailing.

16 (2) The department's order becomes final unless, within 30 days after notice of the department's
17 decision or determination, the owner submits to the department a written request for a hearing specifying the
18 grounds for the appeal.

19 (3) (a) An action initiated under this section may include an administrative penalty determined by the
20 department for each day of a violation. If an order issued by the department under this section requires the
21 payment of an administrative civil penalty, the department shall state findings and conclusions describing the
22 basis for its penalty assessment.

23 (b) Administrative penalties collected under this section for failure to complete remediation activities
24 or decommissioning requirements as defined in 75-8-103(4)(a) must be deposited in the environmental quality
25 protection fund established in 75-10-704.

26 (c) Administrative penalties collected under this section for failure to complete decommissioning
27 requirements as defined in 75-8-103(4)(b) must be deposited in the coal-fired generating unit retirement grant
28 program account established in [section 1].

1 ~~(e)~~(d) In determining the amount of penalty to be assessed for an alleged violation under this section,
2 the department shall consider the penalty factors in 75-1-1001.

3 ~~(d)~~(e) The department may bring a judicial action to enforce a final administrative order issued
4 pursuant to this subsection (3). The action must be filed in the district court of the ~~first judicial district, Lewis and~~
5 ~~Clark County~~ county where the coal-fired generating unit is located."

6

7 **Section 11.** Section 75-10-704, MCA, is amended to read:

8 **"75-10-704. Environmental quality protection fund.** (1) Subject to legislative fund transfers, there is
9 in the state special revenue fund an environmental quality protection fund to be administered as a revolving
10 fund by the department. The department is authorized to expend amounts from the fund necessary to carry out
11 the purposes of this part.

12 (2) The fund may only be used by the department ~~only~~ to carry out the provisions of this part and for
13 remedial actions taken by the department pursuant to this part in response to a release of hazardous or
14 deleterious substances.

15 (3) The department shall:

16 (a) except as provided in subsection (7), establish and implement a system, including the preparation
17 of a priority list, for prioritizing sites for remedial action based on potential effects on human health and the
18 environment; and

19 (b) investigate, negotiate, and take legal action, as appropriate, to identify liable persons, to obtain the
20 participation and financial contribution of liable persons for the remedial action, to achieve remedial action, and
21 to recover costs and damages incurred by the state.

22 (4) There must be deposited in the fund:

23 (a) all penalties, forfeited financial assurance, natural resource damages, and remedial action costs
24 recovered pursuant to 75-10-715;

25 (b) all administrative penalties assessed pursuant to 75-10-714 and all civil penalties assessed
26 pursuant to 75-10-711(5);

27 (c) funds allocated to the fund by the legislature;

28 (d) proceeds from the resource indemnity and ground water assessment tax as authorized by 15-38-

1 106;

2 (e) funds received from the interest income of the resource indemnity trust fund pursuant to 15-38-
3 202;

4 (f) funds received from the interest income of the fund;

5 (g) funds received from settlements pursuant to 75-10-719(7);

6 (h) funds received from the interest paid pursuant to 75-10-722;

7 (i) costs recovered pursuant to ~~75-8-106(7)~~, 75-8-106(8)(a) and penalties recovered pursuant to ~~75-8-~~
8 ~~409~~ 75-8-109(3)(b); and

9 (j) funds transferred from the orphan share account pursuant to 75-10-743(10). The full amount of
10 these funds must be dedicated each fiscal year as follows:

11 (i) 50% to the state's contribution for cleanup and long-term operation and maintenance costs at the
12 Libby asbestos superfund site and allocated pursuant to 75-10-1603 and 75-10-1604; and

13 (ii) 50% to metal mine reclamation projects at abandoned mine sites, as provided in 82-4-371. This
14 subsection (4)(j)(ii) does not apply to exploration or mining work performed after March 9, 1971. Projects
15 funded under this subsection (4)(j)(ii) are not subject to the requirements of Title 75, chapter 10, part 7.

16 (5) Whenever a legislative appropriation is insufficient to carry out the provisions of this part and
17 additional money remains in the fund, the department shall seek additional authority to spend money from the
18 fund through the budget amendment process provided for in Title 17, chapter 7, part 4.

19 (6) Whenever the amount of money in the fund is insufficient to carry out remedial action, the
20 department may apply to the governor for a grant from the environmental contingency account established
21 pursuant to 75-1-1101.

22 (7) (a) There is established a state special revenue account for all funds donated or granted from
23 private parties to remediate a specific release at a specific facility. There must be deposited into the account the
24 interest income earned on the account. A person is not liable under 75-10-715 solely as a result of contributing
25 to this account.

26 (b) Funds donated or granted for a specific project pursuant to this subsection (7) must be
27 accumulated in the fund until the balance of the donated or granted funds is sufficient, as determined by the
28 department, to remediate the facility pursuant to the requirements of 75-10-721 for which the funds are

1 donated.

2 (c) If the balance of the fund created in this subsection (7), as determined by the department pursuant
3 to the requirements of 75-10-721, is not sufficient to remediate the facility within 1 year from the date of the
4 initial contribution, all donated or granted funds, including any interest on those donated or granted funds, must
5 be returned to the grantor.

6 (d) If the balance for a specific project is determined by the department to be sufficient to remediate
7 the facility pursuant to the requirements of 75-10-721, the department shall give that site high priority for
8 remedial action, using the funds donated under this subsection (7).

9 (e) This subsection (7) is not intended to delay, to interfere with, or to diminish the authority or actions
10 of the department to investigate, negotiate, and take legal action, as appropriate, to identify liable persons, to
11 obtain the participation and financial contribution of liable persons for the remedial action, to achieve remedial
12 action, and to recover costs and damages incurred by the state.

13 (f) The department shall expend the funds in a manner that maximizes the application of the funds to
14 physically remediating the specific release.

15 (8) (a) A person may donate in-kind services to remediate a specific release at a specific facility
16 pursuant to subsection (7). A person who donates in-kind services is not liable under 75-10-715 solely as a
17 result of the contribution of in-kind services.

18 (b) A person who donates in-kind services with respect to remediating a specific release at a specific
19 facility is not liable under this part to any person for injuries, costs, damages, expenses, or other liability that
20 results from the release or threatened release, including but not limited to claims for indemnification or
21 contribution and claims by third parties for death, personal injury, illness, loss of or damage to property, or
22 economic loss.

23 (c) Immunity from liability, pursuant to subsection (8)(b), does not apply in the case of a release that is
24 caused by conduct of the entity providing in-kind services that is negligent or grossly negligent or that
25 constitutes intentional misconduct.

26 (d) When a person is liable under 75-10-715 for costs or damages incurred as a result of a release or
27 threatened release of a hazardous or deleterious substance, the person may not avoid that liability or
28 responsibility under 75-10-711 by subsequent donations of money or in-kind services under the provisions of

1 subsection (7) and this subsection (8).

2 (e) Any donated in-kind services that are employed as part of a remedial action pursuant to this
3 subsection (8) must be approved by the department as appropriate remedial action. (Subsection (4)(j)
4 terminates June 30, 2027--sec. 5, Ch. 387, L. 2015.)"

5
6 **NEW SECTION. Section 12. Notification to tribal governments.** The secretary of state shall send a
7 copy of [this act] to each federally recognized tribal government in Montana.

8
9 **NEW SECTION. Section 13. Codification instruction.** [Sections 1 and 2] are intended to be codified
10 as an integral part of Title 75, chapter 8, part 1, and the provisions of Title 75, chapter 8, part 1, apply to
11 [sections 1 and 2].

12
13 **NEW SECTION. Section 14. Severability.** If a part of [this act] is invalid, all valid parts that are
14 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
15 the part remains in effect in all valid applications that are severable from the invalid applications.

16
17 **NEW SECTION. Section 15. Effective date.** [This act] is effective on passage and approval.

18 - END -